Report and advice on the Law on the Court Budget Law of the Republic of Macedonia.

1. **Introduction**.

According to Macedonian legislation, instruments have been developed or are in the stage of development for a transparent and credible way of budgeting courts, which will meet the requirements of a proper judicial independence.

As far as European standards and norm are concerned, only general principles on judicial independence and efficiency are formulated. Moreover there is some case law on the matter of judicial organisation, which relate to the way the work in the judiciary is organised.

Among them are the guarantee of the judges salary, the requirement of decisions within reasonable time, the fact that lack of financial means is no excuse for backlogs in courts.

Briefly one can say that if a judiciary receives sufficient means to perform its constitutional tasks properly, the independence of the judiciary is not violated.

The introduction of the Court Budget Council and its AO marks a significant step towards a further independence of the Macedonian judiciary and is consistent with developments on this topic in Europe and without doubt within European norms.
According to that law the budget for the judiciary is established by parliament while judicial organs themselves take full responsibility for the functioning of the courts .

Nevertheless, as will be indicated later, there is at least one shortcoming in the system, which might endanger the proper functioning of independent justice: judicial costs.

The law comes into force on the eight day from its publication in the Official Gazette, which has taken plave on Sptember 22, 2003, so on 30 September(art.21).

The Court Budget Council shall be formed within 30 days from 30/9, so at its latest on October 30th (art.20).
The rules of order of the CBC shall be made within 30 days from the day of its formation, so at its latest on November 29, 2003.

The Law isn't clear on the moment the AO must be formed; nor does it regulate who appoints the people in the Administrative Office. In any case it would be advisable that the Court Budget Council plays an strong role in the nomination procedure.

2. Strengths and Weaknesses in the Court Budget Law.

From the point of view of the right distributions of competencies and responsibilities is concerned, the independent functioning of the judiciary must be guaranteed by the outcome of the budgeting process. In that process several "players" exist: the Minister of Finance, the Parliament, the Minister of Justice, the Court Budget Council and the Administrative Office (AO).

The decision to grant a budget to the judiciary must be taken by the parliament. This raises the question who will be the defender of the interests of justice before parliament. A proper constitutional distribution of roles would mean that it will the Minister of Justice, maybe the Minister of Finance who plays that role as political responsible. As member of the cabinet of ministers, he should co-operate closely with the Minister of Finance or Justice.

To enhance the necessary transparency in order to make Parliament and the general public aware of the situation, it should be motivated publicly if and why the final proposal to parliament differs with the proposal by the AO end the Court Budget Council. Most probably this requirement for transparency can be taken care of by the president of

the Supreme Court, who has the right to speak on behalf of the judiciary before the Cabinet of Ministers as well as before Parliament.

A second aspect is worth mentioning. As the Minister of Justice is member of the Court Budget Council, he will play a double role: as Court Budget Council-member and as Minister to play his proper role towards the Minister of Finance and in the Cabinet of Ministers. I understand that, as is often the case, this provision is the result of a process that enabled parliament to agree with this piece of legislation. According to me this structure can function, but it is not the ideal situation from a point of view of a clear distribution of powers.

In organisations often the method is used that when two bodies must co-operate with each other, representatives participate in common organs or organisational bodies. This doesn't always produce the necessary transparency or roles. Therefore it is often preferable that both parties concerned make agreements on the respective roles and the way to co-operate and communicate, thus that guarantees are created to ensure a proper co-ordination.

It would be a useful idea that after for instance two years after entering into effect of the law, an *evaluation* would take place to see if this structure were to be maintained. The same goes to a certain extent for the participation of the representative of the Minister of Finance.

A third remark concerns he question whether all bodies, parties and organs concerned have the same clear view on the impact of the CBC-law.

My impression is that the law does not only change the administrative procedures to draft a proper budget for the judiciary, but that the consequences are more far reaching.

The relation between the government (and the Ministries of Finance and Justice) on one side and the judiciary on the other, as to be understood from the CBC-law, implies that the Court Budget Council takes the responsibility for the performance of the Macedonian judiciary as a whole, while courts (and their chairmen) in receiving the

budgets, the full responsibility for the performance of their respective courts towards the Court Budget Council, in which framework the AO will have to function.

The task-force, later to be mentioned, will have to establish the real impact of the law and organise training and seminars on that topic.

The composition of the Court Budget Council through the participation of the courts presidents enables the Court Budget Council to appreciate comprehensively the needs of the courts, as they are usually well informed about the local situation.

3. The role of the judiciary.

As everyone knows, there is a close relation between the aspects: competence, responsibility and accountability.

Applied to the present situation, it means that if and when the judiciary receives budgets in order to perform its duties it becomes the responsibility of the judiciary itself to guarantee that the work is really done. Or, if the budget appears to be insufficient, which part of the work reasonably can be done. In that case also the judiciary must be prepared to take this responsibility with all the risks involved.

When the Ministries of Finance and Justice are prepared to transfer much of its present powers of control of the functioning of important parts of the judiciary, the judiciary can not walk away from this responsibility. And it has to account for that.

For this reason but also for reasons of a proper way of calculating the needs of the judiciary, a system of measuring workload is necessary, to be elaborated later.

In the Macedonian context, starting point should be the proposition of the Supreme Court, as the highest responsible organ for the judiciary as far as delivering judgements is concerned, but also as the aegis under which the courts are functioning.

The Court Budget Council will function under the supervision of the Supreme Court while through its composition and way of functioning the necessary participation of the relevant Ministries (Justice and Finance) is guaranteed. However, on different levels and on certain times agreements must be reached where the Court Budget Council and the head of the AO have formal meetings with representatives of both ministries on the preparation and evaluation of the relevant court budgets.

4. The transition process(task force).

An extremely important and urgent issue concerns the transfer of tasks and duties of the Ministry of Finance concerning the budget for the judiciary, as the daily execution of these tasks is performed by the Ministry of Finance. It is essential that the continuation of periodical expenses is ensured and that measures should be taken to make that possible.

Moreover, courts and their presidents must prepare themselves for their new roles and an inventory of all kinds of measures that go with the implementation of the Court Budget Council and AO must be taken.

Therefore it is advisable that as soon as possible *a task force* is established under authoritative leadership, preferably from among well informed and widely experienced members of the supreme court, to make this inventory and prepare for the necessary measures. Moreover, people experienced on setting up budgets for State organs or public organisations from the Ministries of Justice and/or Finance, should be available; I have the impression that motivated and qualified people are present.

The total number of the members of this task force will be about four, to be employed full time for a period of three to six months. Besides, the task force should be supported by one or two secretaries, if possible with some experience either on domestic or international level, with working of/for projects.

The above mentioned role of the Supreme Court implies that nomination should take place by the Supreme Court, with the consent of the Ministries concerned. He task force should be responsible towards the Supreme Court and, as soon as it is established, to the Court Budget Council.

The taskforce should draw up a comprehensive action plan to implement the new law, indicating which action must be taken by whom and when, including the necessary rules and regulations. Moreover it could investigate where and how available experience from abroad (present NGO's and international organisations) could be helpful in that process.

As the whole process of drawing up the budget for the year is going on this very moment (by a steering group from the Ministries of Finance, Justice and the Supreme Court), the task force should just keep itself informed about the progress and the possible results, keeping close contact with the steering group. This process should not be interrupted. I understood that all court already have submitted their budget proposals. Only in case of necessity, one could consider to take steps.

The taskforce should further ensure a proper transfer of information know how by the Ministry of Finance to the Court Budget Council and the AO, necessary for their proper functioning in the future. This would be favoured when one or more functionaries from the Ministry of Finance would be prepared to be transferred to the AO.

The task force should investigate on which level and in which frequency representatives of both the Ministries of Finance and Justice will have mutual consultations, as experiences in the past have shown that expectations appeared to be quite different.

Also it must investigate if it were possible that the judiciary will be able to make a fresh start, which means with a 0-level, instead of the present deficit of appr. denar 46 mo. In general, in case of introduction of a totally new state organ with new responsibilities, it would be

quite advisable not to burden it from the start with such a debt. Moreover, it is not impossible – and may be investigated – that the debt stems from expenditures caused by judicial decisions, touching on judicial independence.

The task force should indicate which co-ordination mechanism must function. Formal contacts on the matter will be between the CBC and the Ministries on the level of the Minister, deputy Minister and/or highest official (secretary general). More informal contacts must be established on appropriate levels.

The task force should further take measures which enable the competent authorities to nominate the members of the AO. Among the highest priorities is the setting up without delay of the AO as foreseen in art. 10 of the Court Budget Council.

5. The Administrative Office (AO).

According to law, the AO is to be regarded as an integral organisational unit of the Supreme Court. Its position and duties imply that it must function in a more or less autonomous way, in accordance with and under the authority of the Court Budget Council, while it would be useful to investigate , as already mentioned, whether members of the staff of the Ministry of Justice and Finance, presently charged with tasks concerning the judiciary could be transferred to the AO.

The AO will be located in the premises of the Supreme Court.

Head of the AO will be a very important, crucial position, to be performed by a qualified manager who is not necessary a judge or a lawyer. On the other hand, his qualifications should be such that not only the members of the Court Budget Council but also the whole judiciary in Macedonia have confidence in him and his capacities. This will mean that he should have good communication skills as well.

Probably the head of the AO and/or the Court Budget Council and/or the task force must ensure that, as already mentioned, the procedures leading to appropriate court budgets for the year 2004 are followed, so that the functioning in the courts not will be disrupted.

The technical function of the AO will be that it prepares the information, necessary for the CBC to decide on its policy, while decisions by the Court Budget Council must be carried out by the AO. Moreover, the AO must control the administration of the courts and if necessary, report to the CBC.
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The relation between the AO and the courts requires in the first place an open and transparent mutual exchange of data and information and the possibility for the internal auditor to function as such. In spite of the autonomous and independent position if courts, the relation with CBC and AO require a full access of the officials to courts and their information.
If need be, regulations or instructions to that end must be issued.

It is at present difficult to assess how many people should be in the Administrative office, but tentatively one can think about the following formation:
- a head (economist, financial expert, manager);
- two accountants;
- a cashier;
- an IT-expert;
- two administrative officers.

In the present financial economic situation of Macedonia the Ministry of Finance must approve the nomination of staff in the Administrative Office.

Information from the Ministry of Finance shows that the administrative functions of the AO are insofar limited that the execution of the payment task will be performed by the Ministry of Finance (Treasury), as usual. Moreover all existing rules will apply. The CBC however determines the way the budgets are distributed; in

that respect the Treasury just the executes the instructions by the Court Budget Council.

Moreover it is advisable for the AO to set up a cycle of planning and control in which the courts performances are monitored and estimated while the financial control and the future needs will be established in such a way that the necessary control over the spending of budgets is ensured, but also that reliable information, essential for the next year budget is available on time. In fact courts and the AO will be occupied in fact by information on three years: the preceding year, the actual year as well as the following year. If necessary instructions or regulations to that end must be considered.

It goes without saying that in co-operation with the courts the Court Budget Council and AO will provide for long term prospects on budgets, but also on complicated and burdensome topics like housing and automation. These last aspect belong to the responsibility of the Ministry of Justice.

The AO will take care of the whole administration on the basis of the information and administration of the courts. It is to be considered that it will have its own bank account or a similar facility with the Ministry of Finance, in order to provide for a efficient and flexible financing of the courts. For it is the obligation of the AO that the financial resources reach the right destinations. The allocation of budget must in fact take place this way.

Maybe it is useful to mention here some information by the Ministry of Finance, relevant for the setting op of the AO and for the activities of the task force:

The Ministry of Finance has 124 budget users, including all (34) courts.

For the judiciary in the future there will be only one user the Court Budget Council.

Actual paymants will be done by the Treasury, under the Ministry of Finance. This will not be the concern of the AO. There will be no danger of salaries not being paid etc.
All regulations on of the Treasury will apply.
Each court has a cash limit not to be exceeded.
Arrears have been caused by many circumstances, sometimes even as a result of bad management.
It would be a wrong message to all budget users if the judiciary were allowed to start fresh.
It is to be expected that the whole judiciary will be asked to spare this sum on the coming budget 2004.

Revenues like court fees must be received by the Ministry of Finance and not by individual court.
Where necessary , the internal auditor should exercise control.
Courts should cease to perform extra judicial activities in order to collect extra fees.

Within the limits of the budget Court Budget Council and the courts will be allowed reallocation of means.

Now some court officials are under the control of the parliament, which is not always effective. The law on the civil service is not always fully implemented

6. The organisation of the Courts.

It is clear from the law on Court Budget Council that courts as autonomous and independent bodies will need the leadership of their chairman in such a way that they can take their responsibilities under that law.

This requires in the first place an adequate additional training program on this matter, moreover experience shows that court presidents , particularly in bigger courts, have the assistance of a managing director whose skills are not necessarily of a legal nature but more of

an organisational an managerial nature. Where the law on courts mentions the function of secretary, probably such a function is meant, but it is advisable that the requirement of a legal background is deleted.
The introduced system can only function when also here it is perfectly clear to the relevant court officials that there is no competence without responsibility, and that there is no responsibility without accountability. Presidents and court managers therefore will have to give full attention to the management of their courts to be able to implement this rule fully.

In case relatively small courts exist, it could be taken in to consideration that these courts share for instance a managing director and/or one financial administrator in order to secure the quality of the management and the consistence of financial administration. In addition, courts could consider setting up departments for common services like facilities, procurement, automation etc.

The present system of budgeting of courts implies for the Court Budget Council, but also for the courts their responsibility for integral management. As a consequence it should be considered that they will have within the set budgetary limits a certain freedom of reallocation of financial means. Such a freedom only goes with a commitment by the courts and the Court Budget Council of the performance of respectively courts and judiciary as a whole, in terms of output .

Also for that reason a system of workload measurement is essential, to be described later.

The difference between general administration and civil service should be as small as possible, but where the actual situation of the functioning of courts require so, some kind of separation will be justified. As will be mentioned later, staff of the AO will enjoy the status of civil servants. Selection and the role of the internal auditor will ensure their integrity and competence.

The AO must develop a system of computerisation and automation to support its tasks to implement the cycle of planning and control as

well as the preparation of the budgets. The same goes for the administration by the AO.

Some tendencies can be observed in to letting the revenues of a court influence the budget of that court. According to European standards (case law on art 6 ECHR, Principle III of the Recommendations R (94) 12), it is the obligation of state authorities to ensure the necessary budgetary needs for the proper functioning of the court system. As a consequence courts should not be in a position to finance their budgetary needs through sources influenced by themselves.

A different matter concerns the problem of what I would like to call: judiciary costs. In specific and concrete case a judge is regularly to cause costs, in order to give a proper judgement. In this respect one can think of costs for court experts, witnesses, forensic experts, interpreters. Limiting these costs could cause a breach of art. 6 of the ECHR, because the judge is not allowed to judge in freedom and independence the case before him.

7. A system of measuring workload.

Before coming to that, I would like to mention an essential precondition for using such a system: the judiciary cannot influence the amount of work. Or briefly: the judiciary has to take the cases that come in.

This allows for a so called output-financing of courts. As the different judicial activities appear so different in terms of time and human resource input, mostly a budget based on input is considered less advisable.

Experience shows that such a system must meet the following requirements:
a. users cannot influence the outcome;
b. a case is only counted once;
c. the outcome must meet reality (credibility)
d. it must be possible to automatize.

Moreover essential conditions concern the right definition of categories of cases as well as a minute administration on the local court level. Successful introduction of a system of workload measuring requires specific training of the local administrative staff, a detailed manual with definitions instructions, a helpdesk on central level, and finally a system of monitoring.

On the other hand, when the judiciary and AO and Court Budget Council have some experience with a workload system, it will be rather easy for them to see when and where apparently mistakes are made or definition are applied wrongly.

Setting up a system of workload-measurement means in the first place the need for a categorisation of different cases, preferably along the lines by which the courts are organised. For instance sections or departments for criminal cases, civil cases and administrative cases.

It has proven to be difficult to define "what is a case"; finally we have come up with a workable solution: a case is every case which gets a number in court. As workload is determined by output, only cases which have been finished by the court should be measured. The measuring should be done by members of the judiciary and could contain data for the judges and for the supporting staff, that is, those who are working in the primary process.

Procurement staff like doormen, drivers, automation experts, human resource managers support the sections in the court and their time should not be measured as contributing to the work on a specific cases. Their role will be determined differently but certainly not forgotten. Experience in the Netherlands show that for these procurement activities about 27% is needed of the budget designated for the primary process.

It appears that in Macedonia norms exist on how many cases should be dealt with by each judge, which might already give some sort of useful information.

Also the work in courts is organised if different sections, according to which the relevant items can be defined and estimated. Within these sections several judicial activities can be enumerated which can be administrated and measured.

For instance the following departments exist: civil (already marked in the court administration with P), criminal (marked with K), misdemeanours (marked with PR), property. Moreover cases before the investigation judge are marked in a specific way. In criminal cases several kinds of dealing (single judge, panel of judges, participation of lay judges) with cases are present. Also the commercial cases are dealt with by subsections of the civil departments of courts.

Setting up a system of measuring workload would start with the appointment of working groups of judges and supporting staff, defining how much tome the different sorts of cases will take for the judge and for the clerks and administration in effective minutes.
It is generally accepted that not all time of work of judges and clerks is devoted to hearing cases or making judgements. Education, meetings with colleagues, personal care, management, giving instructions, is also necessary but often doesn't contribute directly to the "product" of the court.

In the Netherlands for instance, he following calculation is accepted:

Total possible hours per year (52 x 36 h)		1872
Holidays	367 h	
Average illness 5%	93 h	
Training and education	100 h	
Management and organisation	100 h	
Personal care etc	75 h	
		735
		1137 hours per year

or 68220 minutes per year.

After this according to existing information of the performance of the courts and sections one could check the outcome. When he guesses are more or less accurate, the outcome in different courts should more or less be according it reality. Later the system must be verified by

keeping records by judges and court personnel of the really spent time, to be performed under the supervision of specialised organisations. A system like this requires regular maintenance.

A system of workload measurement has not as an objective to reward the performance of individual judges or courts, but is just a tool to obtain the necessary budgets for the judiciary and the proper distribution of funds to the courts, as well as he right distribution of budgets over the different section in the courts.

8. Judicial Training.

The Law on the Court Budget Council stipulates that 2% of the budget for the judiciary will be spent for judicial training. In itself this is a useful provision, but experience shows that it is complicated to agree on what is included in the concept judicial training. The CBC and/or the Supreme Court will have to decide on that. It goes without saying that the organisation of seminars for judges will be included as well as travelling costs. It becomes more complicated when one asks if the time of the judges concerned, following training activities is included. The same goes for the time, judicial officers in court spend for training trainees and young judges.

A situation to be solved concerns the transition of the activities of the Centre for Continuous Education, at present under the responsibility of the Macedonia Judges Association.

As judicial training is to be considered an obligation by the State (Recommendation CoE 94 Principle III art.1a; art. 2.3 Charter on the Statute of Judges 1998), the CBC must consider to set up a educational organisation. In the first place one must start to reach an agreement with the Ministry of Justice on the question whose responsibility judicial training will be, as from the Ministry the opinion can be heard that it will be under that Ministry. This opinion is based on the idea that training often must take place on new legislation, which is prepared by the Ministry so that the know-how there must be used.

Although this is certainly true, it is the question if this argument is sufficient, as there is more to be done concerning training than to be educated in new legislation. Training also deals with following recent developments in the international and national case law, specialised topics (like intellectual property, transport law, international private law, EU-law, international criminal co-operation and international legal assistance).

Moreover the CBC must start talks with the MJA on the activities of the CCE, which up till now has taken care of judicial training, with activities which were highly appreciated.

In any case, well organised judicial training presupposes a comprehensive programme of activities, indicating target groups, priorities as well as the different methods of training. According to that programme, the help of international organisations (the representative of the Council of Europe says that contributions from that side are possible), NGO's and bilateral partners, to sponsor the training centre in general or with specific activities, fitting in the designed framework.

Interested parties are considering a project, based on obtaining a building in Oteshavo. Having a building for judicial training, gives this activity a "face", judicial training becomes visible. I am not able to assess whether this building is suitable for its purpose, as it depends on the number of training activities and how one may want to perform them: one day training, training for several days so that lodging facilities are necessary. A right exploitation of a building costs time, money and efforts, which must be examined closely. Maybe such an investigating could take place with the assistance of the European Agency for Reconstruction, which agency might be prepared to support the project in many ways. The project-leader could contact this agency for instance on that issue.

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Setting up training facilities, also the examples in neighbouring countries must be taken into account. Interesting seems the Slovenian situation, where a Covenant has been concluded, creating the

Judiciary Education Centre. The question must answered whether a structure like this will fit in the Macedonian situation. In the first place the group to be trained must be defined: are members of the Procuracy included or not?
In the second place remains to be seen, if this will be the right method for the Ministry of Justice, the Supreme Court and/or the Court Budget Council to take responsibility for judicial training, by giving it more or less out of hands to a Centre over which it will have no full control. This will ask for detailed agreements by the parties concerned.

9. Legal positions.

In the first place it appears not to be clear to everyone involved if the people (staff) working in court are civil servants or not; from the representatives of the Supreme Court and the judiciary I received information that this is indeed the case. The same will go for the officers in the AO, to be appointed. As a consequence they are all subject to all existing rules for civil servants.

For the judicial police special regulations apply.

Judges are subject to their own legislation, for instance the Law on Courts or a more specialised law, which I do not have at my disposal at present. In any case, I doubt if there is any uncertainty about their rights an obligations under the law.

When court presidents will have new responsibilities, the law must describe them clearly.

Secondly the whole salary system is under consideration, taking into account for instance the situation in neighbouring countries. Maybe superfluous, but the three following remarks may be made:

a. the level of the judges salary is partly determined by the importance of his work: the impact judicial decisions have on social of economical life;
b. the management-tasks of the chairmen must be made visible in an extra above the salary as a judge.

c. performing non-judicial tasks will have a negative influence on the level of the judges-salaries.

As the judiciary can be classified as an organisation which depends highly of the qualki9ty of judges, and staff, a policy of human resource management must be developed, not only to educate good judges, bnut also to create a highly qualified staff, who are motivated to perform their important duties as good as possible.

10. Recommendations/conclusions.

On the basis of the the above mentioned findings I will summarise (without being exhaustive) the following:

a. appointment of a task force and determination of its tasks on the basis of the above-mentioned topics and actions;
b. starting a project leading to a system of workload measurement;
c. nomination of Court Budget Council and determination of the size of the Administrative Office, selection and appointment of the Head and the others employees;
d. reviewing the administration of the courts and defining the role of chairmen and secretaries;
e. deciding on the structure and organisational place of judicial training;
f. determination or clarification of the legal position of court staff and judges;
g. agreements with the Ministry of Finance on the level of mutual contacts and on the exchange of information and know-how;
h. defining which rules, regulations, manuals and instructions must exist to ensure the proper functioning of the Court Budget Law;
i. evaluation of the existing legislation after four instance two years.

Support from NGO's and/or international organisations (experienced experts from many countries are at present available in the framework of multilateral or bilateral programmes) could be considered particularly on the following topics:

a. setting up the AO and its administration and automation;
b. advising on rules and regulations for the proper functioning of the different organs and bodies;
c. advice on setting up the planning and control cycles;
d. supporting the task force;
e. support with setting up of the disign of a system of measuring workload;
f. training of judges, staff, court managers, chairmen;
g. automation in general;
h. equipment.

Skopje/Zwolle 25 September 2003
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